Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61 Part II
	)	
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

PETITION FOR RECONSIDERATION AND CLARIFICATION

GTE Service Corporation on behalf of its affiliated telecommunications companies

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PETITION FOR RECONSIDERATION AND CLARIFICATION

GTE Service Corporation ("GTE"), on behalf of its affiliated telecommunications companies, hereby petitions the Commission for reconsideration of the *Report and Order*, FCC 96-331 (released August 7, 1996), in particular Paragraph 69 ordering rate integration across affiliates, issued in the above-captioned proceeding. If the Commission declines to reconsider this finding, GTE seeks clarification of how rate integration across affiliates is to be implemented.

I. INTRODUCTION AND SUMMARY

In Paragraph 67 of the *Report and Order*, the Commission "require[d] providers of interexchange service to integrate services offered to subscribers in Guam and the Northern Marianas with services offered in other states no later than August 1, 1997." GTE supports the Commission's efforts to quickly integrate these insular points that are not yet part of the domestic calling scheme of interstate, interexchange carriers. However, the GTE-affiliated carriers are uniquely affected by the Commission's rulings in this proceeding not only because of their number, their services provided and their

operating areas, but the determination in Paragraph 69 of the *Report and Order* that GTE -- and, by the terms of the *Report and Order*, explicitly GTE alone -- must integrate rates across affiliates.

This ruling is contrary to the FCC's past rate integration policies. Singling out GTE in this manner is grossly arbitrary. Finally, compliance would literally contravene numerous FCC policies requiring separation of various affiliates for a variety of matters. Accordingly, GTE respectfully requests that the Commission reconsider its interpretation in Paragraph 69 that a "provider" is the parent company and that rates must be integrated across *all* of its affiliates.

II. THE COMMISSION DOES NOT HAVE THE LEGAL AUTHORITY TO REQUIRE GTE TO INTEGRATE DOMESTIC, INTERSTATE, INTEREXCHANGE RATES ACROSS AFFILIATES.

The *Report and Order* implements Section 254(g) of the Telecommunications Act of 1996 ("the 1996 Act"):

> INTEREXCHANGE AND INTERSTATE SERVICES - Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to *its subscribers* in any other State.[1]

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[1] 47 U.S.C. §254(g)(emphasis added).

By its explicit terms, the statute requires the Commission to adopt rules implementing rate integration. Specifically, those rules shall require that *a provider* of interstate interexchange services shall have rates in each State no higher than rates charged to *its subscribers* in any other State.

Notwithstanding this clear statutory direction to integrate rates charged by a provider to its subscribers, Paragraph 69 interprets the term "'provider' to include parent companies that themselves provide no services, but through affiliates, provide service in more than one state." The Commission concludes "that GTE, for purposes of Section 254(g), constitutes a 'provider' of interexchange services within the meaning of that section, and that it must integrate rates across affiliates."[2] The result of this is that Paragraph 69 considers all GTE interexchange companies as one "provider" of interexchange service for the purpose of rate integration.[3]

A. Section 254(g) is clear on its face, and requires no further interpretation.

GTE submits that the Commission has far exceeded its authority by "interpreting" the 1996 Act in Paragraph 69. First, the statute is clear on its face, and requires no

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2 *Report and Order* at ¶69. After concluding parent companies include affiliates, the Commission determined that GTE, presumably meaning the parent, GTE Corporation, but stating only "GTE," is a provider of interexchange services within Section 254(g).

3 While the Commission singles out GTE in Paragraph 69, presumably all affiliated carriers are subject to this same interpretation of "provider" in Section 254(g). In any case, the Commission never explains why it arbitrarily applied this interpretation to GTE. GTE seeks clarification *infra*.

further interpretation.[4] Section 254(g) applies rate integration to a provider of interstate interexchange telecommunications for service to its subscribers. Although Congress was careful to distinguish between a telecommunications service provider and its affiliates in other provisions of the 1996 Act,[5] it did not include affiliates in Section 254(g). Moreover, the Conference Report confirms that this subsection applies to "a particular provider."[6] By interpreting provider in Section 254(g) to include a parent and its affiliates, Paragraph 69 changes the explicit direction of Congress which applied the rate integration obligation to each service provider.

B. Neither GTE Service Corporation nor GTE Corporation is a carrier or a provider within the terms of the Communications Act.

Section 254(g) applies to providers of telecommunications services. Although "provider" of telecommunications services is not specifically defined in the Act, Section 153(49) defines the term 'telecommunications carrier' as "any provider of

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4 *Chevron U.S.A. v. National Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

5 For example, Section 224(g) states that a utility engaged in "provision of telecommunications services" shall impute to its costs *and charge any affiliate* the relevant pole attachment rate. Section 271 prohibits a Bell operating company *or any affiliate* of a Bell operating company from providing interLATA services. Section 652(a) prohibits a local exchange carrier *or any affiliate of such carrier* from acquiring a cable company in the local exchange carrier telephone area.

6 The Conference Report regarding the Section 254(g) rate integration requirement explains that "the conferees expect that the Commission will continue to require that geographically averaged rate integrated services ... be generally available in the area served by a *particular* provider."

telecommunications services." The converse then is that a provider of telecommunications services is a telecommunications carrier. Neither GTE Service Corporation nor its parent corporation, GTE Corporation, however, is a carrier within the terms of the Communications Act, and neither of these companies provides any interexchange communications services.[7] Paragraph 69 improperly extends carrier obligations to entities which are not carriers and have not heretofore been treated as carriers.[8]

Elsewhere the Act carefully distinguishes between the entities that provide the service and their affiliates. Under Section 153(33), each "affiliate" of a company -- including a parent -- is a different "person." The Act recognizes that the entities that provide service to customers are "persons" -- for example, Section 153(44) defines a local exchange carrier as any "person" engaged in the provision of telephone exchange or access service, but excludes "persons" engaged in the provision of commercial mobile services under Section 332(c). This demonstrates that the Act defines the "provider" of local service to be a LEC, and that Congress recognized that a LEC -- a "person" -- differs from its affiliates -- which are different "persons."

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[7] The Commission previously has recognized that the entities that hold Section 214 authorizations are different and distinct from either a parent holding company or an affiliated company. *See GTE Corporation and Southern Pacific Company*, 94 F.C.C.2d 235, 259-60 (1983).

[8] *See U S WEST Inc. v. FCC*, 778 F.2d 813 (D.C. Cir. 1985).

C. Both law and the actual operations of the GTE-affiliated carriers confirm that they are, in fact, separate operating carriers.

Although the *Report and Order* suggests that GTE Corporation, the parent company, is the underlying provider of service, both law and the actual operations of the GTE-affiliated carriers' service confirm that they are, in fact, separate operating carriers. Neither GTE Corporation nor GTE Service Corporation holds *any* FCC carrier authorizations. FCC licenses or Section 214 authorizations are issued in the name of the GTE entity that in fact provides the service to customers. Similarly, state certifications and authorizations are issued in the name of the specific GTE operating entity that provides service in that state.[9]

GTE Corporation has several subsidiaries which provide telecommunications service, many of which have operated separately for years. Micronesian Telecommunications Corporation ("MTC") is the incumbent local exchange carrier in the Commonwealth of the Northern Mariana Islands ("Northern Mariana Islands"), providing exchange, exchange access, and domestic and international facilities-based, interexchange services from the Northern Mariana Islands. MTC originates interexchange services from the Northern Mariana Islands, but does not originate interexchange traffic from any other U.S. location. No other GTE-affiliated carrier originates interexchange services from the Northern Mariana Islands.

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[9] In no state does GTE Corporation hold any certificate or other authorization to provide a telecommunications service. The GTE telephone operating companies hold their authorizations in their own name. GTE Card Services has separate authorizations in its name, and the same is true for other GTE affiliates.

Other GTE-affiliated carriers provide service from other locations to the Northern Mariana Islands. GTE Hawaiian Telephone Company Incorporated ("GTE Hawaiian Tel"), the incumbent local exchange carrier in Hawaii, provides service to the Northern Mariana Islands from Hawaii.[10] GTE Card Services Incorporated, both through its debit card division and its resale interexchange division, d/b/a GTE Long Distance ("GTELD"), provides service to the Northern Mariana Islands and other offshore points. Similarly, GTE Mobilnet Incorporated, and its cellular services subsidiaries, and GTE Airfone Incorporated, providing air-to-ground service, provide service to the Northern Mariana Islands.

Thus, while several GTE affiliated-carriers currently provide domestic, interexchange telecommunications services, no carrier provides two-way service to the offshore points discussed in the *Report and Order*. In fact, none of these GTE carrier affiliates share facilities.[11] MTC is a facilities-based carrier originating service from the Northern Mariana Islands, but it uses the facilities of a non-affiliated carrier to terminate calls in all other domestic locations (except Hawaii). Similarly, other GTE-affiliated carriers (except GTE Hawaiian Tel) which have calls that terminate in the Northern

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[10] GTE Hawaiian Tel does not provide service to the U.S. Mainland. GTE Hawaiian Tel originates interexchange service to offshore points such as the Northern Mariana Islands, Guam and American Samoa using other carriers to terminate those calls.

[11] MTC provides terminating service in the Northern Mariana Islands to GTE Hawaiian Tel. Similarly, GTE Hawaiian Tel provides terminating service in Hawaii for calls from the Northern Mariana Islands.

Mariana Islands use the interexchange facilities and resell the services of an unaffiliated carrier.[12]

Finally, there is nothing in the record to show that any GTE provider of telecommunications service is trying to avoid *its* obligation to *its subscribers*, as required by the statute, or that the GTE operating companies are in any way "shams." Beyond suggesting that a carrier could try to use separate affiliates to avoid the rate integration requirements in Paragraph 69, the Commission makes no findings that any carrier has, in fact, done so. For the GTE carriers, separate affiliates have been providing service for years, sometimes organized separately because of business reasons and often for compliance with other FCC requirements. As noted above, Congress was quite aware that telecommunications providers have affiliates and specified the inclusion of affiliates when it wanted to include them, but did not include affiliates in Section 245(g).

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[12] The GTE carriers are regulated differently as well. GTE Hawaiian Tel and MTC are regulated as price cap LECs and must not only file tariffs, but must include their interexchange traffic in the Interexchange Price Cap Basket which has an upper bound limited by the Price Cap Index ("PCI"). GTE Card Services and GTELD are non-dominant carriers that file their own tariff. GTE Mobilnet, a non-dominant CMRS provider, that is not required to file its own tariffs, simply references the tariffs of the IXCs whose services it is reselling. GTE Airfone, an air-to ground service provider reselling long distance, files its own tariff.

III. THE COMMISSION SHOULD INCORPORATE OFFSHORE POINTS USING THE EXISTING RATE INTEGRATION POLICIES.

The *Report and Order* incorporates the Commission's earlier rate integration policies, as required in the Conference Report to Section 254(g). The rate integration policy prior to the 1996 Act, however, did not require any carrier to integrate rates across affiliates, as Paragraph 69 requires for GTE. Although AT&T and Sprint were specifically ordered to rate integrate,[13] neither was required to rate integrate across affiliates. In the Order approving GTE's acquisition of Sprint, Sprint was required to integrate Hawaii rates into its Mainland rates, but there was no requirement that Sprint was to integrate its rates with other affiliated carriers.[14]

GTE is unaware of any instance in which the Commission has ignored legitimate legal distinctions between corporate subsidiaries in addressing rate integration issues. Requiring each carrier to effectuate rate integration in its own rates, in fact, is consistent with many other Commission policies that regulate different telecommunications services separately, and in fact *require* separate affiliates to operate independently.[15]

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13 *See Integration of Rates and Services*, Memorandum Opinion, Order and Authorization, 61 FCC 2d 380, 392 (1976).

14 *Application of GTE Corp. And Southern Pac. Co. For Consent to Transfer Control of Southern Pac. Satellite Co.*, Memorandum Opinion and Order, 94 FCC 2d 235, 262-263 (1983).

15 As discussed *supra*, the GTE telephone companies (local exchange carriers subject to price cap regulation, which do provide intrastate intraLATA toll service) are regulated differently than GTELD (a non-dominant reseller) or the GTE Mobilnet cellular companies (CMRS providers). Indeed, separate entities are often required to prevent cross-subsidies between carriers. *See Implementation*

There is nothing in the Order to explain why the Commission was departing from past policies or to justify such a departure.

Further, although rate averaging and rate integration are intimately linked in Section 254(g), the Commission addresses them separately in the *Report and Order*. Nowhere in the section of this *Report and Order* dealing with rate averaging does the Commission define a "provider" to include a parent company and all its affiliates – let alone require that rate averaging must occur across affiliates. Nor did rate averaging prior to the 1996 Act include a requirement that it be done across affiliates. Rather than simply extend its preexisting rate integration policies to the offshore points, which is what Congress had intended,[16] the Commission has carved out a separate and unique definition of "provider." It then established rules based on this definition solely for the

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of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-308, released July 18, 1996. Mandating rate integration across affiliated service providers, as required by Paragraph 69, would require cross-subsidization between affiliates, clearly contrary to past Commission policy. In particular, Paragraph 69 appears to require GTE's CMRS to cross-subsidize interexchange services. It also requires the Micronesian Telecommunications Corporation, a dominant provider of interexchange services, and GTE Long Distance, a non-dominant reseller, to cross-subsidize their interexchange service rates, contrary to a host of FCC policies.

[16] The Conference Report states that Congress simply intended for the FCC to apply the policies contained in its prior rate integration decisions to the offshore points, not to adopt drastic changes. Report No. 230, 104th Cong., 2d Sess. 132.

purposes of rate integration, without any reasoned explanation for this significant departure from precedent.

IV. GTE SEEKS CLARIFICATION THAT ALL AFFILIATED CARRIERS ARE SUBJECT TO THE SAME INTERPRETATION OF 'PROVIDER' PARAGRAPH 69.

If the Commission declines to reconsider this finding, GTE seeks clarification that the Commission was simply using GTE as an example and that all "parent companies that, through affiliates, provide service in more than one state" are required to rate integrate across affiliates. Also, GTE asks the Commission to clarify whether it meant *all* affiliated carriers (including CMRS providers and resellers) are to integrate rates or just those carriers providing facilities-based interexchange services to or from a particular offshore points.

First, GTE presumes that all affiliated carriers are subject to this same interpretation of "provider" in Section 254(g). However, Paragraph 69 singles out GTE, without explaining why it arbitrarily applied this interpretation to GTE. Thus, GTE seeks clarification that the Commission was simply using GTE as an example and that all "parent companies that, through affiliates, provide service in more than one state" are required to rate integrate across affiliates.

Second, GTE asks the Commission to clarify whether it meant *all* GTE-affiliated carriers are to integrate rates or just those carriers providing interexchange services to

or from the particular offshore point.[17] Specifically, clarification is requested whether this direction was meant to include affiliated CMRS providers or interexchange resellers and, if so, that the rate integration *Order* is intended to override other FCC policies that may impose inconsistent requirements on affiliates.

GTE believes, as stated *supra*, that the correct statutory interpretation would require the Commission to look to each carrier. If the Commission continues to believe that the statute must be interpreted otherwise, GTE suggests that rate integration for the offshore points should be interpreted to include only those affiliates which operate interexchange facilities to or from offshore points. For GTE carriers in the Northern Mariana Islands, for example, this would include only MTC and GTE Hawaiian Tel.

V. CONCLUSION

The Commission should reconsider its finding in Paragraph 69 interpreting "provider" as used in Section 254(g) to require rate integration across affiliates. By this interpretation, the Commission unnecessarily departs from past rate integration policies

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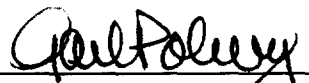
[17] Including all affiliates could have additional unintended consequences. The GTE Telephone Operating Companies ("GTOCs") provide "corridor" traffic between the States of Washington and Idaho and the States of Illinois and Indiana. Although these GTOCs do not serve the Northern Mariana Islands, Guam, American Samoa or any other insular points, the distance from Guam to the Northern Mariana Islands may very likely fall within a rate band for this corridor traffic. GTE's concern is that rate integration across affiliates would be extended to affiliated GTOCs that provide corridor service.

and exceeds its authority under the 1996 Act. If the Commission declines to reconsider this finding, however, GTE seeks clarification of the general applicability of the ruling.

Respectfully submitted,

GTE Service Corporation on behalf of its affiliated telecommunications companies



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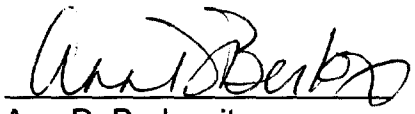
Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Petition for Reconsideration and Clarification" have been mailed by first class United States mail, postage prepaid, on September 16, 1996 to all parties of record.



Ann D. Berkowitz